



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-RO5-OAR-2014-0657; FRL-9929-45-Region 5]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Michigan; Infrastructure SIP Requirements for the 2008 ozone,  
2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS; Michigan State Board  
Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed Rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve elements of state implementation plan (SIP) submissions from Michigan regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 ozone, 2010 nitrogen dioxide (NO<sub>2</sub>), 2010 sulfur dioxide (SO<sub>2</sub>), and 2012 fine particulate (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. EPA is also proposing to approve a submission from Michigan addressing the state board requirements under section 128 of the CAA.

**DATES:** Comments must be received on or before [**insert date 30 days after publication in the Federal Register**].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2014-0657 by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
2. E-mail: [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).
3. Fax: (312) 408-2279.
4. Mail: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID. EPA-R05-OAR-2012-0991 and EPA-R05-OAR-2013-0435. EPA's policy is that all comments received will be included in the public docket without

change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886-9401 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-9401, [arra.sarah@epa.gov](mailto:arra.sarah@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What should I consider as I prepare my comments for EPA?
- II. What is the background of these SIP submissions?
- III. What guidance is EPA using to evaluate these SIP submissions?

IV. What is the result of EPA's review of these SIP submissions?

V. What action is EPA taking?

VI. Incorporation by Reference.

VII. Statutory and Executive Order Reviews.

**I. What should I consider as I prepare my comments for EPA?**

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).
2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

## **II. What is the background of these SIP submissions?**

### **A. What state SIP submissions does this rulemaking address?**

This rulemaking addresses submissions from the Michigan Department of Environmental Management (MDEQ). The state submitted its infrastructure SIP for the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS, as well as state board requirements under section 128 for incorporation into the SIP, on July 10, 2014.

### **B. Why did the state make these SIP submissions?**

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards" (2007 Memo) and has issued additional guidance documents, the most

recent on September 13, 2013, "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)" (2013 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2), and address the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS. To the extent that the prevention of significant deterioration (PSD) program is non-NAAQS specific, a narrow evaluation of other NAAQS will be included in the appropriate sections.

**C. What is the scope of this rulemaking?**

EPA is acting upon the SIP submissions from MDEQ that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised

NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA section 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (SSM); (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP-approved emissions limits with limited



public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion); and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final New Source Review (NSR) Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). Instead, EPA has the authority to address each one of these substantive areas in separate rulemakings. A detailed history, interpretation, and rationale as they relate to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, "Infrastructure SIP Requirements for the 2008 Lead NAAQS" in the section, "What is the scope of this rulemaking?" (see 79 FR 27241 at 27242 - 27245).

### **III. What guidance is EPA using to evaluate these SIP submissions?**

EPA's guidance for these infrastructure SIP submissions is embodied in the 2007 Memo. Specifically, attachment A of that memorandum (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. EPA issued additional guidance documents, the most recent being the 2013 Memo, which further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

**IV. What is the result of EPA's review of these SIP submissions?**

As noted in the 2013 Memo, pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. MDEQ provided the opportunity for public comment for these submittals that ended on May 7, 2014. Additionally, MDEQ provided an opportunity for a public hearing. The state received comments and responded to them. EPA is also soliciting comment on our evaluation of the state's infrastructure SIP submission in this notice of proposed rulemaking. MDEQ provided detailed synopses of how various components of its SIP meet each of the requirements in section 110(a)(2) for the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS, as applicable. The following review evaluates the state's submissions.

**A. Section 110(a)(2)(A) - Emission limits and other control measures.**

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning

requirements are due.<sup>1</sup> In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

The Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451), sections 324.5503 and 324.5512, provide the Director of MDEQ with the authority to regulate the discharge of air pollutants, and to promulgate rules to establish standards for emissions for ambient air quality and for emissions. To maintain the 2008 ozone NAAQS, Michigan implements controls and emission limits for nitrogen oxide (NO<sub>x</sub>), a precursor of ozone, in Michigan Administrative Code sections R 336.1801 through R 336.1834; and controls and emission limits for volatile organic compounds (VOC), also a precursor of ozone, in sections R 336.1601 through R 336.1661 and R 336.1701 through R 336.1710. The NO<sub>x</sub> controls in sections R 336.1801 through R 336.1834 also help to maintain the 2010 NO<sub>2</sub> NAAQS. To maintain the 2010 SO<sub>2</sub> NAAQS, Michigan implements SO<sub>2</sub> controls and emission limits in sections R 336.1401 through R 336.1420. To maintain the 2012 PM<sub>2.5</sub> NAAQS, Michigan implements controls and emission limits for particulate matter sources in

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<sup>1</sup> See, e.g., EPA's final rule on "National Ambient Air Quality Standards for Lead." 73 FR 66964 at 67034.

sections R 336.1301 through R 336.1374. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

As previously noted, EPA is not proposing to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

**B. Section 110(a)(2)(B) - Ambient air quality monitoring/data system.**

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. This review of the annual monitoring plan includes EPA's determination that the state: (i) monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

MDEQ's authority to promulgate rules to establish ambient air quality standard are found in Michigan Compiled laws (MCL) 324.5503 and MCL 324.5512. MDEQ continues to operate an air monitoring network; EPA approved the state's 2015 Annual Air

Monitoring Network Plan on October 31, 2014, including the plan for ozone, NO<sub>2</sub>, SO<sub>2</sub>, and PM<sub>2.5</sub>. MDEQ enters air monitoring data into AQS, and the state provides EPA with prior notification when changes to its monitoring network or plan are being considered. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

**C. Section 110(a)(2)(C) – Program for enforcement of control measures; PSD.**

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and NNSR programs. Part C of the CAA (sections 160 – 169B) addresses PSD, while part D of the CAA (sections 171 – 193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers:

- (i) enforcement of SIP measures; (ii) PSD provisions that explicitly identify NO<sub>x</sub> as a precursor to ozone in the PSD program; (iii) identification of precursors to PM<sub>2.5</sub> and identification of PM<sub>2.5</sub> and PM<sub>10</sub><sup>2</sup> condensables in the PSD program;

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<sup>2</sup> PM<sub>10</sub> refers to particles with diameters between 2.5 and 10 microns, oftentimes referred to as "coarse" particles.

(iv) PM<sub>2.5</sub> increments in the PSD program; and, (v) greenhouse gas (GHG) permitting and the "Tailoring Rule."<sup>3</sup>

Sub-element 1: Enforcement of SIP measures

MDEQ maintains an enforcement program to ensure compliance with SIP requirements. Part 55 of Act 451, MCL 324.5501 through 324.5542, gives MDEQ the authority to enforce emission limits and other control measures in rules, permits, and orders. In addition, MCL 324.5530 authorizes the Michigan Attorney General to commence a civil service action for appropriate relief for violations of or failure to comply with Part 55 of Act 451. The Clean Corporate Citizen Program is authorized through MCL 324.1401 through 324.1429. EPA proposes that Michigan has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

Sub-element 2: PSD provisions that explicitly identify NO<sub>x</sub> as a precursor to ozone in the PSD program

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<sup>3</sup> In EPA's April 28, 2011, proposed rulemaking for infrastructure SIPs for the 1997 ozone and PM<sub>2.5</sub> NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (see 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012, proposed rulemaking for infrastructure SIPs for the 2006 PM<sub>2.5</sub> NAAQS (see 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO<sub>x</sub> as a precursor to ozone, PM<sub>2.5</sub> precursors, PM<sub>2.5</sub> and PM<sub>10</sub> condensables, PM<sub>2.5</sub> increments, or the federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2010 NO<sub>2</sub> NAAQS.

EPA's "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard - Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 29, 2005 (see 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO<sub>x</sub> as a precursor to ozone (70 FR 71612 at 71679, 71699-71700). This requirement was codified in 40 CFR 51.166.

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including those identifying NO<sub>x</sub> as a precursor to ozone, by June 15, 2007 (see 70 FR 71612 at 71683, November 29, 2005).

EPA approved revisions to Michigan's PSD SIP reflecting these requirements on April 4, 2014 (see 79 FR 18802), and therefore proposes that Michigan has met the set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

Sub-element 3: Identification of precursors to PM<sub>2.5</sub> and the identification of PM<sub>2.5</sub> and PM<sub>10</sub> condensables in the PSD program

On May 16, 2008 (see 73 FR 28321), EPA issued the Final Rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)" (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM<sub>2.5</sub> and other pollutants that contribute to secondary PM<sub>2.5</sub> formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM<sub>2.5</sub>, otherwise known as precursors. In the 2008 rule, EPA identified precursors to PM<sub>2.5</sub> for the PSD program to be SO<sub>2</sub> and NO<sub>x</sub> (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to PM<sub>2.5</sub> in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient PM<sub>2.5</sub> concentrations.

The explicit references to SO<sub>2</sub>, NO<sub>x</sub>, and VOCs as they pertain to secondary PM<sub>2.5</sub> formation are codified at 40 CFR 51.166(b)(49)(i)(b) and 40 CFR 52.21(b)(50)(i)(b). As part of identifying pollutants that are precursors to PM<sub>2.5</sub>, the 2008 NSR Rule also required states to revise the definition of



"significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b)(23)(i) and 40 CFR 52.21(b)(23)(i) define "significant" for PM<sub>2.5</sub> to mean the following emissions rates: 10 tons per year (tpy) of direct PM<sub>2.5</sub>; 40 tpy of SO<sub>2</sub>; and 40 tpy of NO<sub>x</sub> (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was May 16, 2011 (see 73 FR 28321 at 28341).<sup>4</sup>

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate

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<sup>4</sup> EPA notes that on January 4, 2013, the U.S. Court of Appeals for the D.C. Circuit, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM<sub>10</sub> nonattainment areas (Title I, Part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1. As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 rule that address requirements for PM<sub>2.5</sub> attainment and unclassifiable areas to be affected by the Court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR Rule in order to comply with the Court's decision. Accordingly, EPA's approval of Michigan's infrastructure SIP as to elements (C), (D)(i)(II), or (J) with respect to the PSD requirements promulgated by the 2008 implementation rule does not conflict with the court's opinion.

The Court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 implementation rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subparts 2 through 5 under part D, extending as far as 10 years following designations for some elements.

matter, known as condensables, in  $PM_{2.5}$  and  $PM_{10}$  emission limits in NSR permits. Instead, EPA determined that states had to account for  $PM_{2.5}$  and  $PM_{10}$  condensables for applicability determinations and in establishing emissions limitations for  $PM_{2.5}$  and  $PM_{10}$  in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(a) and 40 CFR 52.21(b)(50)(i)(a). Revisions to states' PSD programs incorporating the inclusion of condensables were required be submitted to EPA by May 16, 2011 (see 73 FR 28321 at 28341).

EPA approved revisions to Michigan's PSD SIP reflecting these requirements on April 4, 2014 (see 79 FR 18802), and therefore proposes that Michigan has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2008 ozone, 2010  $NO_2$ , 2010  $SO_2$ , and 2012  $PM_{2.5}$  NAAQS.

#### Sub-element 4: $PM_{2.5}$ increments in the PSD program

On October 20, 2010, EPA issued the final rule on the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ( $PM_{2.5}$ ) - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (2010 NSR Rule). This rule established several components for making PSD permitting determinations for  $PM_{2.5}$ , including a system of "increments" which is the mechanism

used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in the table below.

**Table 1: PM<sub>2.5</sub> Increments Established by the 2010 NSR Rule in micrograms per cubic meter**

	Annual arithmetic mean	24-hour max
Class I	1	2
Class II	4	9
Class III	8	18

The 2010 NSR Rule also established a new “major source baseline date” for PM<sub>2.5</sub> as October 20, 2010, and a new trigger date for PM<sub>2.5</sub> as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(c) and (b)(14)(ii)(c), and 40 CFR 52.21(b)(14)(i)(c) and (b)(14)(ii)(c). Lastly, the 2010 NSR Rule revised the definition of “baseline area” to include a level of significance of 0.3 micrograms per cubic meter, annual average, for PM<sub>2.5</sub>. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

On April 4, 2014 (79 FR 18802), EPA finalized approval of the applicable infrastructure SIP PSD revisions; therefore, we are proposing that Michigan has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

Sub-element 5: GHG permitting and the “Tailoring Rule”

With respect to Elements C and J, EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Michigan has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, the EPA is not continuing to apply EPA regulations

that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (e.g. 40 CFR 51.166(b)(48)(v)).

EPA anticipates a need to revise Federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to the EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States Court of Appeals for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, EPA is proposing that Michigan's SIP is sufficient to satisfy Elements C, D(i)(II), and J with respect

to GHGs because the PSD permitting program previously approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved Michigan PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy Elements C, (D)(i)(II), and J. The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision.

For the purposes of the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS infrastructure SIPs, EPA reiterates that NSR Reform regulations are not within the scope of these actions. Therefore, we are not taking action on existing NSR Reform regulations for Michigan. EPA approved Michigan's minor NSR program on May 6, 1980 (see 45 FR 29790); and since that date, MDEQ and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and

maintenance of the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

Certain sub-elements in this section overlap with elements of section 110(a)(2)(D)(i), section 110(a)(2)(E) and section 110(a)(2)(J). These links will be discussed in the appropriate areas below.

**D. Section 110(a)(2)(D) - Interstate transport.**

Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state.

On February 17, 2012, EPA promulgated designations for the 2010 NO<sub>2</sub> NAAQS, stating for the entire country that, "The EPA is designating areas as "unclassifiable/attainment" to mean that available information does not indicate that the air quality in these areas exceeds the 2010 NO<sub>2</sub> NAAQS" (see 77 FR 9532). For comparison purposes, EPA examined the design values<sup>5</sup> from NO<sub>2</sub> monitors in Michigan and surrounding states. The highest design value based on data collected between 2011 and 2013 was 44 ppb at a monitor in Detroit, MI, compared to the standard which is 100 ppb for the 2010 NO<sub>2</sub> NAAQS. Additionally, Michigan has SIP

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<sup>5</sup> The level of the 2010 NO<sub>2</sub> NAAQS for is 100 parts per billion (ppb) and the form is the 3-year average of the annual 98<sup>th</sup> percentile of the daily 1-hour maximum. For the most recent design values, see <http://www.epa.gov/airtrends/values.html>.

approved rules that limit NO<sub>x</sub> emissions, including rules in Michigan Administrative Code sections R 336.1801 through R 336.1834. EPA believes that, in conjunction with the continued implementation of the state's SIP-approved PSD and NNSR regulations, these low monitored values of NO<sub>2</sub> will continue in and around Michigan. In other words, the NO<sub>2</sub> emissions from Michigan are not expected to cause or contribute to a violation of the 2010 NO<sub>2</sub> NAAQS in another state, and these emissions are not likely to interfere with the maintenance of the 2010 NO<sub>2</sub> NAAQS in another state. Therefore, EPA proposes that Michigan has met transport prongs 1 and 2 related to section 110(a)(2)(D)(i)(I) for the 2010 NO<sub>2</sub> NAAQS. Michigan, as noted in its July 11, 2014, clarification letter, did not make submittals pertaining to section 110(a)(2)(D)(i)(I) for the 2008 ozone, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

Section 110(a)(2)(D)(i)(II) requires that SIPs include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state.

EPA notes that Michigan's satisfaction of the applicable infrastructure SIP PSD requirements for the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS have been detailed in the section addressing section 110(a)(2)(C). EPA further notes that the



proposed actions in that section related to PSD are consistent with the proposed actions related to PSD for section 110(a)(2)(D)(i)(II), and they are reiterated below.

EPA has previously approved revisions to Michigan's SIP that meet certain requirements obligated by the Phase 2 Rule and the 2008 NSR Rule. These revisions included provisions that: explicitly identify NO<sub>x</sub> as a precursor to ozone, explicitly identify SO<sub>2</sub> and NO<sub>x</sub> as precursors to PM<sub>2.5</sub>, and regulate condensable PM<sub>2.5</sub> and PM<sub>10</sub> in applicability determinations and establishing emissions limits. EPA has also previously approved revisions to Michigan's SIP that incorporate the PM<sub>2.5</sub> increments and the associated implementation regulations including the major source baseline date, trigger date, and level of significance for PM<sub>2.5</sub> per the 2010 NSR Rule. EPA is proposing that Michigan's SIP contains provisions that adequately address the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. One way that this requirement can be satisfied is through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state.

Michigan's EPA-approved NNSR regulations found in Part 2 of the SIP, specifically in Michigan Administrative Code sections R

336.1220 and R 336.1221, are consistent with 40 CFR 51.165, or 40 CFR part 51, appendix S. Therefore, EPA proposes that Michigan has met all of the applicable PSD requirements for the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS for transport prong 3 related to section 110(a)(2)(D)(i)(II).

With regard to the applicable requirements for visibility protection of section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2013 Memo states that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.

In today's rulemaking, EPA is not proposing to approve or disapprove Michigan's satisfaction of the visibility protection requirements of section 110(a)(2)(D)(i)(II), transport prong 4, for the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS. Instead, EPA will evaluate Michigan's compliance with these requirements in a separate rulemaking<sup>6</sup>.

Section 110(a)(2)(D)(ii) requires that each SIP contains adequate provisions requiring compliance with the applicable

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<sup>6</sup> Michigan has an approved regional haze plan for most non-EGUs. Michigan's plan for EGUs relied on the Clean Air Interstate Rule that has been recently superseded by the Cross State Air Pollution Rule to which Michigan EGU sources are also subject.

requirements of sections 126 and 115 (relating to interstate and international pollution abatement, respectively).

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

Michigan has provisions in its EPA-approved PSD program in Michigan Administrative Code section R 336.2817 requiring new or modified sources to notify neighboring states of potential negative air quality impacts, and has referenced this program as having adequate provisions to meet the requirements of section 126(a). EPA is proposing that Michigan has met the infrastructure SIP requirements of section 126(a). Michigan does not have any obligations under any other subsection of section 126, nor does it have any pending obligations under section 115. EPA, therefore, is proposing that Michigan has met all applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) for the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

**E. Section 110(a)(2)(E) - Adequate resources.**

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under section 128.

Sub-element 1: Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues.

MDEQ's SIP program is funded through 105 and 103 grants and matching funds from the state's General Fund. As discussed in earlier sections, MDEQ has the legal authority to carry out the Michigan SIP under Act 451 and the Executive Reorganization Order 2011-1. Michigan's PSD regulations provide adequate resources to permit GHG sources. EPA proposes that Michigan has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

Sub-element 2: State board requirements under section 128 of the CAA.

Section 110(a)(2)(E) also requires that each SIP contains provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) that any board or body which approves permits or enforcement orders under this chapter shall have at least a

majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

On July 10, 2014, MDEQ submitted rules from the Civil Service Rule at 2-8.3(a)(1) for incorporation into the SIP, pursuant to section 128 of the CAA. MDEQ does not have a state board. The authority to approve air permits and enforcement orders rest with the MDEQ Director and his designee. These authorities are found in MCL 324.5503, MCL 324.301(b), Executive Order No. 1995-18, and delegation letter from the MDEQ Director to the Air Quality Division chief and supervisors. Therefore, section 128(a)(1) of the CAA is not applicable in Michigan.

Under section 128(a)(2), the head of the executive agency with the power to approve enforcement orders or permits must adequately disclose any potential conflicts of interest. The Civil Service Rule 2-8.3(a)(1) contains provisions that adequately satisfy the requirements of section 128(a)(2). This provision requires that "At least annually, an employee shall disclose to the employee's appointing authority all personal or financial interests of the employee or members of the employee's immediate family in any business or entity with which the

employee has direct contact while performing official duties as a classified employee" (Civil Service Rule 2-8.3(a)(1)). The Civil Service Rule 1-9.1 subjects the MDEQ Director and designees to this provision. Therefore, when evaluated together in the context of section 128(a)(2), the director of MDEQ or his/her designee must fully disclose any potential conflicts of interest relating to permits or enforcement orders under the CAA. As a result, we are proposing to approve Civil Service Rule 2-8.3(a)(1) into the SIP. On July 10, 2014, MDEQ requested that these rules satisfy not only the applicable requirements of section 128 of the CAA, but that they satisfy any applicable requirements of section 110(a)(2)(E) for the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS. Therefore, EPA is proposing that MDEQ has satisfied the applicable infrastructure SIP requirements for this section of 110(a)(2)(E) for the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

**F. Section 110(a)(2)(F) - Stationary source monitoring system.**

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also

require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

MDEQ implements a stationary source monitoring program under the authority of MCL 324.5512 and MCL 324.5503 of Act 451. Additional emissions testing, sampling, and reporting requirements are found in Michigan Administrative Code sections R 336.201 through R 336.202 and R 336.2011 through R 336.2199. Emissions data is submitted to EPA through the National Emissions Inventory system and is available to the public online and upon request. EPA proposes that Michigan has satisfied the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

**G. Section 110(a)(2)(G) - Emergency powers.**

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the CAA, and adequate contingency plans to implement such authority. The 2013 Memo states that infrastructure SIP submissions should specify authority, rested in an appropriate official, to restrain any source from causing or contributing to emissions

which present an imminent and substantial endangerment to public health or welfare, or the environment.

MDEQ has the authority to require immediate discontinuation of air contamination discharges that constitute an imminent and substantial endangerment to public health, safety, welfare, or the environment under MCL 324.5518 of Act 451. MCL 324.5530 provides for civil action by the Michigan Attorney General for a violation as just described. EPA proposes that Michigan has met the applicable infrastructure SIP requirements of section 110(a)(2)(G) related to authority to implement measures to restrain sources from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment with respect to the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

**H. Section 110(a)(2)(H) - Future SIP revisions.**

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.

MDEQ continues to update and implement needed revisions to Michigan's SIP as necessary to meet ambient air quality standards. Authority for MDEQ to adopt emissions standards and compliance schedules is found at MCL 324.5512 and MCL 324.5503 of Act 451. EPA proposes that Michigan has met the



infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

**I. Section 110(a)(2)(I) - Nonattainment area plan or plan revisions under part D.**

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

**J. Section 110(a)(2)(J) - Consultation with government officials; public notifications; PSD; visibility protection.**

The evaluation of the submissions from Michigan with respect to the requirements of section 110(a)(2)(J) is described below.

Sub-element 1: Consultation with government officials.

States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

Michigan actively participates in the regional planning efforts that include business, community groups, state rule developers, representatives from the FLMs, and other affected stakeholders. Michigan Administrative Code section R 336.2816 requires that FLMs are provided with notification of permit applications that may impact class I areas. Additionally, Michigan is an active member of the Lake Michigan Air Directors Consortium, which consists of collaboration with the States of Illinois, Wisconsin, Indiana, Minnesota, and Ohio. EPA proposes that Michigan has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

Sub-element 2: Public notification.

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and must enhance public awareness of measures that can be taken to prevent exceedances.

MDEQ notifies the public if there are NAAQS exceedances and of any public health hazards associated with those exceedances through CleanAirAction!, AirNow, and EnviroFlash as well as posting on its website. MDEQ published an annual air quality report comparing Michigan monitors to the NAAQS. EPA proposes that Michigan has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

Sub-element 3: PSD.

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. MDEQ's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II), and EPA notes that the proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J). Therefore, EPA proposes that Michigan has met all of the infrastructure SIP requirements for PSD associated with section 110(a)(2)(D)(J) for the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

Sub-element 4: Visibility protection.

With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

**K. Section 110(a)(2)(K) - Air quality modeling/data.**

SIPs must provide for performing air quality modeling for predicting effects on air quality of emissions of any NAAQS pollutant and submission of such data to EPA upon request.

MDEQ continues to review the potential impact of major, and some minor, new and modified sources using computer models. Michigan's rules regarding air quality modeling are contained in Michigan Administrative Code sections R 336.1240 and R 336.1241. These modeling data are available to EPA or other interested parties upon request. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

**L. Section 110(a)(2)(L) - Permitting fees.**

This section requires that SIPs mandate that each major stationary source pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

MDEQ implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62969); revisions to the program were approved on November 10, 2003 (68 FR 63735). MDEQ's authority to levy and collect an annual air quality fee from fee-subject facilities is found in section 324.5522 of Act 451. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(L) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

**M. Section 110(a)(2)(M) – Consultation/participation by affected local entities.**

States must consult with and allow participation from local political subdivisions affected by the SIP.

MDEQ regularly works with local political subdivisions for attainment planning purposes and actively participates in regional planning organizations. Rulemaking is subject to notice, comment, and hearing requirements under the Michigan Administrative Procedures Act, 1969 PA 306 and is authorized in MCL 324.5512. EPA proposes that Michigan has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS.

**V. What action is EPA taking?**

EPA is proposing to approve most elements of submissions from MDEQ certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2008 ozone, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, and 2012 PM<sub>2.5</sub> NAAQS. In addition, EPA is proposing to approve a submission from Michigan intended to meet the state board requirements of section 128, specifically the Civil Service Rule 2-8.3(a)(1).

EPA's proposed actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) are contained in the table below.

Element	2008 Ozone	2010 NO <sub>2</sub>	2010 SO <sub>2</sub>	2012 PM <sub>2.5</sub>
(A) - Emission limits and other control measures.	A	A	A	A
(B) - Ambient air quality monitoring/data system.	A	A	A	A
(C)1 - Program for enforcement of control measures.	A	A	A	A
(C)2 - PSD.	A	A	A	A
(D)1 - I Prong 1: Interstate transport - significant contribution.	NA	A	NA	NA
(D)2 - I Prong 2: Interstate transport - interfere with maintenance.	NA	A	NA	NA
(D)3 - II Prong 3: Interstate transport - prevention of significant deterioration.	A	A	A	A
(D)4 - II Prong 4: Interstate transport - protect visibility.	NA	NA	NA	NA
(D)5 - Interstate and international pollution abatement.	A	A	A	A
(E)1 - Adequate resources.	A	A	A	A
(E)2 - State board requirements.	A	A	A	A
(F) - Stationary source monitoring system.	A	A	A	A
(G) - Emergency power.	A	A	A	A
(H) - Future SIP revisions.	A	A	A	A
(I) - Nonattainment planning requirements of part D.	+	+	+	+
(J)1 - Consultation with government officials.	A	A	A	A
(J)2 - Public notification.	A	A	A	A
(J)3 - PSD.	A	A	A	A
(J)4 - Visibility protection.	+	+	+	+
(K) - Air quality modeling/data.	A	A	A	A
(L) - Permitting fees.	A	A	A	A
(M) - Consultation and participation by affected local entities.	A	A	A	A

In the above table, the key is as follows:

A	Approve
NA	No Action / Separate Rulemaking
+	Not Germaine to Infrastructure

## VI. Incorporation by Reference.

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by

reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Michigan Civil Service Commission Rule 2-8.3(a)(1) entitled "Disclosure," effective October 1, 2013. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

#### **VII. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally



permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 11, 2015.

Susan Hedman,  
Regional Administrator, Region 5.

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